



Department of Defense INSTRUCTION

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Administrative Reissuance Incorporating through Change 2, December 12, 1997

USD(A&T)

SUBJECT: Revitalizing Base Closure Communities - Base Closure Community Assistance

- References:
- (a) Title 32, Code of Federal Regulations, Part 174, "Revitalizing Base Closure Communities," current edition
 - (b) The President's Five-Part Plan, "A Program to Revitalize Base Closure Communities," July 2, 1993 ¹
 - (c) Title XXIX of Public Law 103-160, "National Defense Authorization Act for Fiscal Year 1994," November 30, 1993
 - (d) Public Law 103-421, "The Base Closure Community Redevelopment and Homeless Assistance Act of 1994," October 25, 1994
 - (e) through (t), see enclosure 1

1. PURPOSE

This Instruction prescribes procedures to implement references (a) and (b) and real and personal property disposal to assist the economic recovery of communities impacted by base closures and realignments. The expeditious disposal of real and personal property will help communities get started with reuse early and is, therefore, critical to timely economic recovery.

¹ Available from the Base Closure and Community Reinvestment Office, 400 Army Navy Drive, Suite 200, Arlington, Va 22202
email: "base_reuse@acq.osd.mil"

2. APPLICABILITY AND SCOPE

This Instruction:

2.1. Applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "the DoD Components").

2.2. Does not create any rights or remedies and may not be relied upon by any person, organization, or other entity to allege a denial of any rights or remedies other than those provided by references (c) and (d) and Pub. L. 104-106 (reference (e)).

3. DEFINITIONS

Terms used in this Instruction are defined in enclosure 2.

4. POLICY

4.1. It is DoD policy to help communities impacted by base closures and realignments achieve rapid economic recovery through effective reuse of the assets of closing and realigning bases -- more quickly, more effectively and in ways based on local market conditions and locally developed reuse plans. This will be accomplished by quickly ensuring that communities and the Military Departments communicate effectively and work together to accomplish mutual goals of quick property disposal and rapid job generation.

4.2. The authority provided by Section 202 and 203 of the Federal Property and Administrative Services Act of 1949 (reference (f)), as amended, for the utilization and disposal of excess and surplus property at closing and realigning bases has been delegated by the Administrator of the General Services Administration (GSA) to the Secretary of Defense by delegations dated March 1, 1989; October 9, 1990; September 13, 1991; and , September 1, 1995. Authority under these delegations has been previously delegated to the Secretaries of the Military Departments, who may delegate this authority further.

4.3. Authorities delegated to the Deputy Under Secretary of Defense (Industrial Affairs and Installations)² by subsection 5.1 of DoD Directive 4165.66 (reference (h)) are hereby redelegated to the Secretaries of the Military Departments, unless otherwise provided within this Instruction or other DoD Directive, Instruction, Manual or Regulation. These authorities may be delegated further.

5. RESPONSIBILITIES

5.1. The Deputy Under Secretary of Defense (Industrial Affairs and Installations), under the Under Secretary of Defense for Acquisition and Technology, after coordination with the General Counsel of the Department of Defense and other officials as appropriate, may issue guidance through the publication of a Manual or other such *document necessary* to implement laws, Directives and Instructions on the retention or disposal of real and personal property at closing or realigning bases.

5.2. The Heads of the DoD Components shall ensure compliance with this Instruction and guidance issued by the Assistant Secretary of Defense for Economic Security and the Deputy Under Secretary of Defense (Industrial Affairs and Installations) on revitalizing base closure communities.

6. PROCEDURES

6.1. Identification of Interest in Real Property

6.1.1. To speed the economic recovery of communities affected by closures and realignments, it is DoD policy to identify DoD and Federal interests in real property at closing and realigning military bases as quickly as possible. The Military Department having responsibility for the closing or realigning base shall identify such interests. The Military Department shall keep the Local Redevelopment Authority (LRA) informed of these interests. This subsection establishes a uniform process, with specified timelines, for identifying real property that is excess to the Military Departments for use by other DoD Components and Federal Agencies, and for the disposal of surplus property for various purposes.

² A Deputy Secretary of Defense Memorandum (reference (g)) disestablished the office of the Assistant Secretary of Defense for Economic Security and established the office of the Deputy Under Secretary of Defense (Industrial Affairs and Installations). Copies may be obtained from the Base Closure and Community Reinvestment Office, 400 Army Navy Drive, Suite 200, Arlington, VA 22202, email: "base_reuse@acq.osd.mil"

6.1.2. Upon the President's submission of the recommendations for base closures and realignments to the Congress in accordance with the Defense Base Closure and Realignment Act of 1990 (reference (i)), the Military Department shall send out a notice of potential availability to the other DoD Components, and other Federal Agencies. The notice of potential availability is a public document and should be made available in a timely manner, upon request. Federal Agencies are encouraged to review this list, and to evaluate whether they may have a requirement for the listed properties. The notice of potential availability should describe the property and buildings that may be available for transfer. Installations which wholly or in part are comprised of withdrawn and reserved public domain lands should implement paragraph 6.1.12., below, at the same time.

6.1.3. Military Departments should consider LRA input in making determinations on the retention of property (size of cantonment area), if provided. Generally, determinations on the retention of property (or size of the cantonment area) should be completed before the date of approval of the closure or realignment.

6.1.4. Within one week of the date of approval of the closure or realignment, the Military Department shall issue a formal notice of availability to other DoD Components and Federal Agencies covering closing and realigning installation buildings and property available for transfer to other DoD Components and Federal Agencies. Withdrawn public domain lands, which the Secretary of the Interior has determined are suitable for return to his jurisdiction, will not be included in the notice of availability.

6.1.5. Within 30 days of date of the notice of availability, any DoD Component or Federal Agency is required to provide a written, firm expression of interest for buildings and property. An expression of interest must explain the intended use and the corresponding requirement for the buildings and property.

6.1.6. Within 60 days of the date of the notice of availability, the DoD Component or Federal Agency expressing interest in buildings or property must submit an application for transfer of such property to the Military Department or Federal Agency.

6.1.6.1. Within 90 days of the notice of availability, the Federal Aviation Administration (FAA) should survey the air traffic control and air navigation equipment at the installation to determine what is needed to support the air traffic control, surveillance, and communications functions supported by the Military

Department, and to identify the facilities needed to support the National Airspace System. FAA requests for property to manage the National Airspace System will not be governed by paragraph 6.1.9., below. Instead, such requests will be governed by the requirements of 41 CFR 101-47.308-2 (reference (j)) to determine the transfer of property necessary for control of the airspace being relinquished by the Military Department.

6.1.7. The Military Department shall keep the LRA informed of the progress in identifying interests. At the same time, the LRA is encouraged to contact Federal Agencies that sponsor public benefit transfers for information and technical assistance. The Military Department shall provide points of contact at the Federal Agencies to the LRA.

6.1.8. Federal Agencies and the DoD Components are encouraged to discuss their plans and needs with the LRA, if an LRA exists. The DoD Components and Federal Agencies are encouraged to notify the Military Department of the results of this non-binding consultation. The Military Departments, the Base Transition Coordinator, and the Office of Economic Adjustment Project Manager are available to help facilitate communication between the Federal Agencies, the DoD Components, and the LRA.

6.1.9. A request for property from a DoD Component or Federal Agency must contain the following information:

6.1.9.1. A completed GSA Form 1334, "Request for Transfer" (for requests from other DoD Components, a DD Form 1354 is required). This must be signed by the head of the Component of the Department or Agency requesting the property. If the authority to acquire property has been delegated, a copy of the delegation must accompany the form.

6.1.9.2. A statement from the head of the requesting Component or Agency that the request does not establish a new program (i.e., one that has never been reflected in a previous budget submission or Congressional action).

6.1.9.3. A statement that the requesting Component or Agency has reviewed its real property holdings and cannot satisfy this requirement with existing property. This review must include all property under the requester's accountability, including permits to other Federal Agencies and outleases to other organizations.

6.1.9.4. A statement that the requested property would provide greater

long-term economic benefits than acquisition of a new facility or other property for the program.

6.1.9.5. A statement that the program for which the property is requested has long-term viability.

6.1.9.6. A statement that considerations of design, layout, geographic location, age, state of repair, and expected maintenance costs of the requested property clearly demonstrate that the transfer will prove more economical over a sustained period of time than acquiring a new facility.

6.1.9.7. A statement that the size of the property requested is consistent with the actual requirement.

6.1.9.8. A statement that fair market value reimbursement to the Military Department will be made within two years of the initial request for the property, unless this obligation is waived by the Office of Management and Budget and the Secretary of the Military Department, or a public law specifically provides for a non-reimbursable transfer. However, requests from the Military Departments or the DoD Components do not need an Office of Management and Budget waiver.

6.1.9.9. A statement that the requesting DoD Component or Federal Agency agrees to accept the care and custody costs for the property on the date the property is available for transfer, as determined by the Military Department.

6.1.10. The Military Department shall make its decision on a request from a Federal Agency, Military Department, or DoD Component based upon the following factors, from the Federal Property Management Regulations (reference (j)):

6.1.10.1. The paramount consideration shall be the validity and appropriateness of the requirement upon which the proposal is based.

6.1.10.2. The proposed Federal use is consistent with the highest and best use of the property.

6.1.10.3. The requested transfer will not have an adverse impact on the transfer of any remaining portion of the base.

6.1.10.4. The proposed transfer will not establish a new program or substantially increase the level of an agency's existing programs.

6.1.10.5. The application offers fair market value for the property, unless waived.

6.1.10.6. The proposed transfer addresses applicable environmental responsibilities to the satisfaction of the Military Department.

6.1.10.7. The proposed transfer is in the best interest of the Government.

6.1.11. When there are more than one acceptable applications for the same building or property, the Military Department responsible for the installation should first consider the needs of the military to carry out its mission. The Military Department should then consider the proposal's economic development and job creation potential and the LRA's comments, as well as the other factors in the determination of highest and best use.

6.1.12. Closing or realigning installations may contain "public domain lands" that have been withdrawn by the Secretary of the Interior from operation of the public land laws and reserved for the Defense Department's use. Lands deemed suitable for return to the public domain are not real property governed by the Federal Property and Administrative Services Act of 1949 (reference (f)) and are not governed by the property management and disposal provisions of the Base Closure and Realignment Act of 1988 (reference (k)) and Defense Base Closure and Realignment Act of 1990 (reference (i)). Public domain lands are under the jurisdiction of the Secretary of the Interior and administered by the Bureau of Land Management (BLM) unless the Secretary of the Interior has withdrawn the lands and reserved them for another Federal Agency's use.

6.1.12.1. The Military Department responsible for a closing or realigning installation shall provide the BLM with the notice of potential availability, as well as information about which, if any, public domain lands will be affected by the installation's closing.

6.1.12.2. The BLM shall review the notice of potential availability to determine if any installations contain withdrawn public domain lands. Before the date of approval of the closure or realignment, the BLM shall review its land records to identify any withdrawn public domain lands at the closing installations. Any records discrepancies between the BLM and Military Departments should be resolved within this time period. The BLM shall notify the Military Departments as to the final agreed upon withdrawn and reserved public domain lands at installations.

6.1.12.3. Upon agreement as to what withdrawn and reserved public domain lands are affected at closing installations, the BLM shall initiate a screening of Department of Interior Agencies to determine if these lands are suitable for programs of the Secretary of the Interior.

6.1.12.4. Military Departments shall transmit a Notice of Intent to Relinquish (see 43 CFR Part 2372, reference (1)) to the BLM as soon as it is known that there is no DoD Component interest in reusing the public domain lands. The BLM shall complete the suitability determination screening process within 30 days of receipt of the Military Department's Notice of Intent to Relinquish. If a DoD Component is approved to reuse the public domain lands, the BLM will be notified and BLM shall determine if the current authority for military use of these lands needs to be modified and/or amended

6.1.12.5. If BLM determines the land is suitable for return, they shall notify the Military Department that the intent of the Secretary of the Interior is to accept the relinquishment of the Military Department.

6.1.12.6. If BLM determines the land is not suitable, the lands should be disposed of pursuant to base closure law.

6.1.13. The Military Department should make its surplus determination within 100 days of the issuance of the notice of availability, and shall inform the LRA of the determination. If requested by the LRA, the Military Department may postpone the surplus determination for a period of no more than six months after the date of approval of the closure or realignment.

6.1.13.1. In unusual circumstances, extensions beyond six months can be granted by the DUSD(IA&I).

6.1.13.2. Extensions of the surplus determination should be limited to the portions of the installation where there is an outstanding interest, and every effort should be made to make decisions on as much of the installation as possible, within the specified timeframes.

6.1.14. Once the surplus determination has been made, the Military Department shall:

6.1.14.1. Follow the procedures outlined in subsection 6.2., below, if applicable.

6.1.14.2. Or, for installations approved for closure or realignment after October 25, 1994, and installations approved for closure or realignment before October 25, 1994, that have elected, before December 24, 1994, to come under the process outlined in the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (reference (d)), follow the procedures outlined in 32 CFR 92 (reference (m)).

6.1.15. Following the surplus determination, but before the disposal of property, the Military Department may, at its discretion, withdraw the surplus determination and evaluate a Federal Agency's late request for excess property.

6.1.15.1. Transfers under this paragraph shall be limited to special cases, as determined by the Secretary of the Military Department

6.1.15.2. Requests shall be made to the Military Department, as specified under paragraphs 6.1.8. and 6.1.9, above, and the Military Department shall notify the LRA of such late request.

6.1.15.3. Comments received from the LRA and the time and effort invested by the LRA in the planning process should be considered when the Military Department is reviewing a late request.

6.2. Homeless Screening for Properties Not Covered by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (reference (d))

6.2.1. This subsection outlines the procedure created for the identification of real property to fulfill the needs of the homeless by Sec. 2905(b)(6) of Pub.L. 101-510 (reference (i)), as amended by Pub.L. 103-160 (reference (c)). It applies to Base Realignment and Closure (BRAC) 88, 91, and 93 bases if the LRA did not elect to be subject to the alternate homeless assistance screening procedure contained in reference (d).

6.2.2. The Military Department shall sponsor a workshop or seminar in the communities that have closing or realigning bases, unless such a workshop or seminar has already been held. These workshops or seminars will be conducted before the Federal Register publication by HUD of available property to assist the homeless.

6.2.2.1. Not later than the date upon which the determination of surplus is made, the Military Department shall complete any determinations or surveys necessary to determine whether any building is available to assist the homeless. The Military Department shall then submit the list of properties available to assist the

homeless to HUD.

6.2.2.2. HUD shall make a determination of the suitability of each property to assist the homeless in accordance with the Stewart B. McKinney Homeless Assistance Act, "the McKinney Act", (reference (n)). Within 60 days from the date of receipt of the information from the Department of Defense, HUD shall publish a list of suitable properties that shall become available when the base closes or realigns.

6.2.2.3. The listing of properties in the Federal Register under this procedure shall contain the following statement. (The listing of 1988 base closure properties that will be reported to HUD shall refer to Sec. 204(b)(6) of Pub.L. 100-526 instead of Sec. 2905(b)(6) of Pub.L. 101-510):

"The properties contained in this listing are closing and realigning military installations. This report is being accomplished pursuant to Sec. 2905(b)(6) of Pub.L. 101-510, as amended by Pub.L. 103-160. In accordance with Sec. 2905(b)(6), this property is subject to a one-time publication under the McKinney Act after which property not provided to homeless assistance providers will not be published again unless there is no expression of interest submitted by the local redevelopment authority in the one-year period following the end of the McKinney screening process pursuant to this publication."

6.2.3. Providers of assistance to the homeless shall then have 60 days in which to submit expressions of interest to HHS in any of the listed property. If a provider indicates an interest in a listed property, it shall have an additional 90 days after submission of its written expression of interest to submit a formal application to HHS, a period which HHS can extend. HHS shall then have 25 days after receipt of a completed application to review and complete all actions on such applications.

6.2.4. During this screening process (from 60 to 175 days following the Federal Register publication, as appropriate), disposal agencies shall take no final disposal action or allow reuse of property that HUD has determined suitable and that may become available for homeless assistance unless and until:

6.2.4.1. No timely expressions of interest from providers are received by HHS;

6.2.4.2. No timely applications from providers expressing interest are received by HHS; or,

6.2.4.3. HHS rejects all applications received for a specific property.

6.2.5. The Military Department should promptly inform the affected LRA, the Governor of the State, local governments, and agencies that support public benefit conveyances of the date the surplus property will be available for community reuse if:

6.2.5.1. No provider expresses an interest to HHS in a property with the allotted 60 days;

6.2.5.2. There are expressions of interest by homeless assistance providers, but no application is received by HHS from such a provider within the subsequent 90-day application period (or within the longer application period if HHS has granted an extension); or,

6.2.5.3. HHS rejects all applications for a specific property at any time during the 25-day HHS review period.

6.2.6. The LRA shall have 1 year from the date of notification under paragraph 6.2.5., above, to submit a written expression of interest to incorporate the remainder of the property into a redevelopment plan.

6.2.7. During the allotted 1-year period for the LRA to submit a written expression of interest for the property, surplus properties not already approved for homeless reuse shall not be available for homeless assistance. The surplus properties will also not be advertised by HUD as suitable during these 1-year periods. The surplus property may be available for interim leases consistent with subsection 6.6., below.

6.2.8. If the LRA does not express in writing its interest in a specific property during the allotted 1-year period or it notifies the Military Department it is not interested in the property, the disposal agency shall again notify HUD of the date of availability of the property for homeless assistance. HUD may then list the property in the Federal Register as suitable and available after the base closes following the procedures of the McKinney Act (reference (n)).

6.3. Local Redevelopment Authority and the Redevelopment Plan

6.3.1. The LRA should have broad-based membership, including, but not limited to, representatives from those jurisdictions with zoning authority over the property. Generally, there will be one recognized LRA per installation.

6.3.2. The LRA should focus primarily on developing a comprehensive redevelopment plan based upon local needs. The plan should recommend land uses based upon an exploration of feasible reuse alternatives. If applicable, the plan should consider notices of interest received under the provisions of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (reference (d)). This Subsection shall not be construed to require a plan that is enforceable under State and local land use laws, nor is it intended to create any exemption from such laws.

6.3.3. The Military Department shall develop a disposal plan and complete the appropriate environmental documentation no later than 12 months from receipt of the redevelopment plan. The local redevelopment plan will generally be used as the basis for the proposed action in conducting environmental analyses required by under the National Environmental Policy Act of 1969 (NEPA), (reference (o)). The disposal plan will specifically address the methods for disposal of property at the installation, including conveyances for homeless assistance, public benefit transfers, public sales, Economic Development Conveyances and other disposal methods.

In the event there is no LRA recognized by the Department of Defense and/or if a redevelopment plan is not received from the LRA within 15 months from the determination of surplus under paragraph 6.1.13., above, (unless an extension of time has been granted by the DUSD(IA&I), the applicable Military Department shall proceed with the disposal of property under applicable property disposal and environmental laws and regulations.

6.4. Economic Development Conveyances

6.4.1. Section 2903 of Pub. L. 103-160 (reference (c)) gives the Secretary of Defense the authority to transfer property to local redevelopment authorities for consideration in cash or in kind, with or without initial payment, or with only partial payment at time of transfer, at or below the estimated present fair market value of the property. This authority creates an additional tool for local communities to help spur economic opportunity through a new real property conveyance method specifically designed for economic development, referred to as the "Economic Development Conveyance" (EDC).

6.4.2. The EDC can only be used when other surplus Federal property disposal authorities for the intended land use cannot be used to accomplish the necessary economic redevelopment.

6.4.3. An LRA is the only entity able to receive property under an EDC.

6.4.4. A properly completed application will be the basis for a decision on whether an LRA will be eligible for an EDC. An application should be submitted by the LRA after a redevelopment plan is adopted by the LRA. The Secretary of the Military Departments shall establish a reasonable time period for submission of the EDC application after consultation with the LRA. The Military Departments shall review the applications and make a decision whether to make an EDC based on the criteria specified in paragraph 6.4.7., below. The terms and conditions of the EDC will be negotiated between the Military Departments and the LRA. Bases in rural areas shall be conveyed with no consideration if they meet the standards in paragraph 6.5.5., below.

6.4.5. The application should explain why an EDC is necessary for economic redevelopment and job creation. In addition to the elements listed in this paragraph, after Military Department review of the application, additional information may be requested to allow for better evaluation of the application. The application should also contain the following elements:

6.4.5.1. A copy of the adopted redevelopment plan.

6.4.5.2. A project narrative including the following:

6.4.5.2.1. A general description of property requested.

6.4.5.2.2. A description of the intended uses.

6.4.5.2.3. A description of the economic impact of closure or realignment on the local communities.

6.4.5.2.4. A description of the financial condition of the community and the prospects for redevelopment of the property.

6.4.5.2.5. A statement of how the EDC is consistent with the overall redevelopment plan.

6.4.5.3. A description of how the EDC will contribute to short- and long-term job creation and economic redevelopment of the base and community, including projected number and type of new jobs it will assist in creating.

6.4.5.4. A business and/or operational plan for the EDC parcel, including such elements as:

6.4.5.4.1. A development timetable, phasing schedule and cash flow analysis.

6.4.5.4.2. A market and financial feasibility analysis describing the economic viability of the project, including an estimate of net proceeds over a fifteen-year period, the proposed consideration or payment to the Department of Defense, and the estimated present fair market value of the property.

6.4.5.4.3. A cost estimate and justification for infrastructure and other investments needed for the development of the EDC parcel.

6.4.5.4.4. Local investment and proposed financing strategies for the development.

6.4.5.4.5. A statement describing why other authorities -- such as public or negotiated sale and public benefit transfers for education, parks, public health, aviation, historic monuments, prisons, and wildlife conservation -- cannot be used to accomplish the economic development and job creation goals.

6.4.5.5. If a transfer is requested for less than the estimated present fair market value, with or without initial payment at the time of transfer, then a statement should be provided justifying the discount. The statement should include the amount and form of the proposed consideration, a payment schedule, the general terms and conditions for the conveyance, and projected date of conveyance.

6.4.5.6. A statement of the LRA's legal authority to acquire and dispose of the property.

6.4.6. Upon receipt of an application for an EDC, the Secretary of the Military Department shall determine whether an EDC is needed to spur economic development and job creation and examine whether the terms and conditions proposed are fair and reasonable. The Military Department may also consider information independent of the application, such as views of other Federal Agencies, appraisals, caretaker costs and other relevant material. The Military Department may propose and negotiate any alternative terms or conditions that it considers necessary.

6.4.7. The following factors will be considered, as appropriate, in evaluating

the application and the terms and conditions of the proposed transfer, including price, time of payment and other relevant methods of compensation to the Federal Government:

6.4.7.1. Adverse economic impact of closure or realignment on the region and potential for economic recovery after an EDC.

6.4.7.2. Extent of short- and long-term job generation.

6.4.7.3. Consistency with overall redevelopment plan.

6.4.7.4. Financial feasibility of the development, including market analysis and need and extent of proposed infrastructure and other investments.

6.4.7.5. Extent of State and local investment, level of risk incurred, and the LRA's ability to implement the plan.

6.4.7.6. Current local and regional real estate market conditions.

6.4.7.7. Incorporation of other Federal Agency interests and concerns, and applicability of, and conflicts with, other Federal surplus property disposal authorities.

6.4.7.8. Relationship to the overall Military Department disposal plan for the installation.

6.4.7.9. Economic benefit to the Federal Government, including protection and maintenance cost savings and anticipated consideration from the transfer.

6.4.7.10. Compliance with applicable Federal, State, and local laws and regulations.

6.4.8. Before making an EDC, the Military Department must prepare an estimate of the present fair market value of the property, which may be expressed as a range of values. The Military Department shall consult with the LRA on valuation assumptions, guidelines and on instructions given to the person(s) making the estimation of value. The Military Department is fully responsible for completion of the valuation. The Military Department, in preparing the estimate of present fair market value shall include, to the extent practicable, the uses identified in the local redevelopment plan.

6.5. Consideration for Economic Development Conveyances

6.5.1. For conveyances made under subsection 6.4., above, the Secretary of the Military Department shall review the application for an EDC and negotiate the terms and conditions of each transaction with the LRA. The Military Departments will have the discretion and flexibility to enter into agreements that specify the form, amount, and payment schedule. The consideration may be at or below the estimated present fair market value, with or without initial payment, in cash or in-kind and paid over time.

6.5.2. An EDC must be one of the two following types of agreements:

6.5.2.1. Consideration within the estimated range of present fair market value, as determined by the Secretary of the Military Department.

6.5.2.2. Consideration below the estimated range of present fair market value, when proper justification is provided and when the Secretary of the Military Department determines that a discount is necessary for economic redevelopment and job creation.

6.5.3. If the consideration under an EDC is within the range of value listed in subparagraph 6.5.2.1., above, the amount paid in the future should take into account the time value of money and include repayment of interest. Any transaction that waives or delays interest payments will be considered as a transaction below the present fair market value under subparagraph 6.5.2.2., above, and as such must be justified as necessary for economic development and job creation.

6.5.4. Additional provisions may be incorporated in the conveyance documents to protect the Department's interest in obtaining the agreed upon compensation, including such items as predetermined release prices, or other appropriate clauses designed to ensure payment and protect against fraudulent transactions.

6.5.5. In a rural area, as defined by this Instruction, any EDC approved by the Secretary of the Military Department shall be made without consideration if the base closure will have a substantial adverse impact on the economy of the communities in the vicinity of the installation and on the prospect for their economic recovery.

6.5.6. In those instances in which an EDC is made for consideration below the range of the estimated present fair market value of the property -- or if the

estimated present fair market value is expressed as a range of values, below the lowest value in that range -- the Military Department shall prepare a written explanation of why the estimated present fair market value was not obtained. Additionally, the Military Departments must prepare a written statement explaining why other Federal property transfer authorities could not be used to generate economic redevelopment and job creation.

6.6. Leasing of Real Property

6.6.1. Leasing of real property before the final disposition of closing and realigning bases may facilitate State and local economic adjustment efforts and encourage economic redevelopment.

6.6.2. In addition to leasing property at fair market value, to assist local redevelopment efforts the Secretaries of the Military Departments may also lease real and personal property located at a military installation to be closed or realigned under a base closure law, pending final disposition, for less than fair market value if the Secretary concerned determines that:

6.6.2.1. A public interest will be served as a result of the lease.

6.6.2.2. The fair market value of the lease is unobtainable, or not compatible with such public benefit.

6.6.3. Pending final disposition of an installation, the Military Departments may grant interim leases that are short-term leases that make no commitment for future use or ultimate disposal. When granting an interim lease, the Military Department will generally lease to the LRA but can lease property directly to other entities. If the interim lease is entered into before completion of the final disposal decisions under the National Environmental Policy Act (NEPA) process (reference (o)), the term may be for up to five years, including options to renew, and may contain restrictions on use. Leasing should not delay the final disposal of the property. After completion of the final disposal decisions, the term of the lease may be longer than five years.

6.6.4. If the property is leased for less than fair market value to the LRA and the interim lease permits the property to be subleased, the interim lease shall provide that rents from the subleases will be applied by the lessee to the protection, maintenance, repair, improvement and costs related to the property at the installation consistent with 10 U.S.C. 2667 (reference (p)).

6.7. Personal Property

6.7.1. This subsection outlines procedures to allow transfer of personal property to the LRA for the effective implementation of a community reuse plan.

6.7.2. Each Military Department and DoD Component, as appropriate, shall take an inventory of the personal property, including its condition, within 6 months after the date of approval of closure or realignment. This inventory will be limited to the personal property located on the real property to be disposed of by the Military Department or DoD Component. The inventory will be taken in consultation with LRA officials. If there is no LRA, the Military Department shall offer to provide a consultation for the local government in whose jurisdiction the installation is wholly located or for a local government agency or a State government agency designated for that purpose by the chief executive officer of the State. Based on these consultations, the base commander shall determine the items or category of items that have the potential to enhance the reuse of the real property.

6.7.3. Except for property subject to the exemptions in paragraph 6.7.5., below, personal property with potential to enhance the reuse of the real estate shall remain at a base being closed or realigned until disposition is otherwise determined by the Military Department. This determination will be made no earlier than 90 days after the Military Department receives an adopted redevelopment plan or when notified by the LRA that there will be no redevelopment plan.

6.7.4. National Guard property demonstrably identified as being purchased with State funds is not available for reuse planning or subject to transfer for redevelopment purposes, unless so identified by the State property officer. National Guard property purchased with Federal funds is subject to inventory and may be made available for redevelopment planning purposes.

6.7.5. Personal property may be removed upon approval of the base commander or higher authority, within and as prescribed by the Military Department, after the inventory required in paragraph 6.7.2., above, has been sent to the redevelopment authority, when:

6.7.5.1. The property, other than ordinary fixtures, is required for the operation of a transferring unit, function, component, weapon, or weapons system;

6.7.5.2. The property is required for the operation of a unit, function, component, weapon, or weapon system at another installation within the Military Department, subject to the following conditions:

6.7.5.2.1. Ordinary fixtures, including but not limited to such items as blackboards, sprinklers, lighting fixtures, and electrical and plumbing systems, shall not be removed under subparagraph 6.7.5.2., above.

6.7.5.2.2. Other personal property may be removed under subparagraph 6.7.5.2., above, only after the Military Department has consulted with the LRA and, with respect to disputed items, upon the approval of an Assistant Secretary of the Military Department.

6.7.5.3. The property is uniquely military in character and is likely to have no civilian use (other than use for its material content or as a source of commonly used components). This property consists of classified items; nuclear, biological, chemical items; weapons and munitions; museum property or items of significant historic value that are maintained or displayed on loan; and similar military items;

6.7.5.4. The property is not required for the reutilization or redevelopment of the installation (as jointly determined by the Military Department concerned and the redevelopment authority);

6.7.5.5. The property is stored at the installation for distribution (including spare parts or stock items). This property includes materials or parts used in a manufacturing or repair function but does not include maintenance spares for equipment to be left in place;

6.7.5.6. The property meets known requirements of an authorized program of another Federal Department or Agency that would have to purchase similar items, and the property is the subject of a written request received from the head of the other Department or Agency. If the authority to acquire personal property has been delegated, a copy of the delegation must accompany the request. In this context, "purchase" means the Federal Department or Agency intends to obligate funds in the current quarter or next six fiscal quarters. The Federal Department or Agency must pay packing, crating, handling, and transportation charges associated with such transfers of personal property;

6.7.5.7. The property belongs to nonappropriated fund instrumentalities (NAFI) and other non-Defense Department activities. Such property may be removed at the Military Departments' discretion because it does not belong to the Defense Department and, therefore, it may not be transferred to the redevelopment authority under this section. For NAFI property, separate arrangements for communities to

purchase such property are possible and may be negotiated with the Military Department concerned; or,

6.7.5.8. The property is needed elsewhere in the national security interest of the United States as determined by the Secretary of the Military Department concerned. This authority may not be redelegated below the level of an Assistant Secretary. In exercising this authority, the Secretary may transfer the property to any entity of the Department of Defense or other Federal Agency.

6.7.6. In addition to the exemptions in paragraph 6.7.5., above, the Military Department or DoD Component is authorized to substitute an item similar to one requested by the redevelopment authority.

6.7.7. Personal property not subject to the exemptions in paragraph 6.7.5., above, may be conveyed to the redevelopment authority as part of an economic development conveyance for the real property if the Military Department makes a finding that the personal property is necessary for the effective implementation of the redevelopment plan.

6.7.8. Personal property may also be conveyed separately to the LRA under an economic development conveyance for personal property. This type of economic development conveyance can be made if the Military Department determines that the transfer is necessary for the effective implementation of a redevelopment plan with respect to the installation. Such determination shall be based on the LRA's timely application for the property, which should be submitted to the Military Department upon completion of the redevelopment plan. The application must include the LRA's agreement to accept the personal property after a reasonable period. The transfer will be subject to reasonable limitations and conditions on use.

The Military Department shall restrict the LRA's ability to acquire personal property at less than fair market value solely for the purpose of releasing or reselling it, unless the LRA will lease or sell the personal property to entities which will place it into productive use in accordance with the redevelopment plan. The LRA must retain personal property conveyed under an EDC for less than fair market value for at least one year if it is valued at less than \$5,000, or at least two years if valued at more than \$5,000. Any proceeds from such leases or sales must be used to pay for protection, maintenance, repair or redevelopment of the installation. The LRA will be required to certify its compliance with the provisions of this subparagraph at the end of each fiscal year for no more than two years after transfer. The certification may be subject to random audits by the Government.

6.7.9. Personal property that is not needed by the Military Department or a Federal Agency or conveyed to a redevelopment authority (or a State or local jurisdiction instead of a local redevelopment authority) will be transferred to the Defense Reutilization and Marketing Office for processing in accordance with 41 CFR 101-43 through 101-45, (reference (j)) and DoD 4160.21-M (reference (q)).²

6.7.10. Useful personal property determined to be surplus to the needs of the Federal Government by the Defense Reutilization and Marketing Office and not qualifying for transfer to the redevelopment authority under an economic conveyance may be donated to the community or redevelopment authority through the appropriate State Agency for Surplus Property (SASP). Personal property donated under this procedure must meet the usage and control requirements of the applicable SASP. Property subsequently not needed by the community or redevelopment authority shall be disposed of as required by its SASP.

6.8. Maintenance, Utilities, and Services

6.8.1. Facilities and equipment located on bases being closed are often important to the eventual reuse of the base. This subsection provides maintenance procedures to preserve and protect those facilities and items of equipment needed for reuse in an economical manner that facilitates base redevelopment.

6.8.2. To ensure quick reuse, the Military Department, in consultation with the LRA, shall establish initial levels of maintenance and repair needed to aid redevelopment and to protect the property for the time periods set forth in this subsection. Where agreement between the Military Department and the LRA cannot be reached, the Secretary of the Military Department shall determine the required levels of maintenance and repair and its duration. In no case will these initial levels of maintenance:

6.8.2.1. Exceed the standard of maintenance and repair in effect on the date of closure or realignment approval;

6.8.2.2. Be less than maintenance and repair required to be consistent with Federal Government standards for excess and surplus properties (i.e., 41 CFR 101-47.402 and 41 CFR 101-47.4913) (reference (j)); or,

² Copies may be obtained from the Defense Logistics Agency, 8725 John J. Kingman Rd, Ft. Belvoir, VA 22060-6221

6.8.2.3. Require any property improvements, including construction, alteration, or demolition, except when the demolition is required for health, safety, or environmental purposes, or is economically justified instead of continued maintenance expenditures.

6.8.3. The initial levels of maintenance and repair shall be tailored to the redevelopment plan, and shall include the following provisions:

6.8.3.1. The facilities and equipment that are likely to be used in the near term will be maintained at levels that shall prevent undue deterioration and allow transfer to the LRA.

6.8.3.2. The scheduled closure or realignment date of the installation will not be delayed.

6.8.4. The Military Department shall not reduce the agreed upon initial maintenance and repair levels unless it establishes a new arrangement (e.g., termination of caretaking upon leasing of property) in consultation with the LRA.

6.8.5. The Military Department shall determine the length of time it will maintain the initial levels of maintenance and repair for each closing or realigning base. This determination will be based on factors such as the closure and/or realignment date and the timing of the completion of the National Environmental Policy Act (NEPA) (reference (m)) documentation on the proposed disposal (such as a finding of no significant impact and disposal decision following an environmental assessment or the record decision following an environmental impact statement).

6.8.5.1. For a base that was not closed before July 20, 1995, and where the Military Department has completed the NEPA analysis on the proposed disposal before the operational closure of that base, the time period for the initial levels of maintenance and repair normally will extend no longer than one year after operational closure of the base.

6.8.5.2. For a base that did not close before July 20, 1995, and where the base's operational closure precedes the completion of the NEPA analysis on the proposed disposal, the time period for the initial levels of maintenance and repair will normally extend no longer than one year after operational closure or 180 days after the Secretary of the Military Department approves the NEPA analysis.

6.8.5.3. For a base that closed before July 20, 1995, the time period for

the existing levels of maintenance will normally extend no longer than one year from July 20, 1995.

6.8.6. The Military Department may extend the time period for the initial levels of maintenance and repair for property still under its control for an additional period, if the Secretary of the Military Department determines that the Local Redevelopment Authority is actively implementing its redevelopment plan, and such levels of maintenance are justified.

6.8.7. Once the time period for the initial or extended levels of maintenance and repair elapses, the Military Department will reduce the levels of maintenance and repair to levels consistent with Federal Government standards for excess and surplus properties (i.e., 41 CFR 10147.402 and 41 CFR 101-47.4913) (reference (j)).

6.9. Leaseback of Property at Base Closure and Realignment Sites

6.9.1. Section 2905 (b)(4)(C) of Pub. L. 101-510 (BRAC 1990) (reference (i)), as added by Section 2837 of Pub. L. 104-106 (reference (e)), gives the Secretary of Defense the authority to *transfer real property that is needed by a Federal Department or Agency to an LRA, if the LRA* agrees to lease the property back to the Federal Department or Agency in accordance with all statutory and regulatory guidance. The purpose of this authority, hereinafter referred to as a "leaseback," is to enable the LRA to obtain ownership of the property pursuant to the BRAC process, while still ensuring that the Federal need for use of the property is accommodated.

6.9.2. Subject to Section 2905(b)(4)(C) of reference (i) and this Instruction, the decision whether to transfer property pursuant to a leaseback rests with the relevant Military Department. However, a Military Department may only transfer property via a leaseback if the Federal entity that needs the property agrees to the leaseback arrangement.

6.9.3. If for any reason property cannot be transferred pursuant to a leaseback (e.g., the relevant Federal Department or Agency prefers ownership, the LRA and the Federal entity cannot agree on terms of the lease, or the Military Department determines that a leaseback would not be in the Federal interest), such property shall remain in Federal ownership unless and until the relevant landholding entity determines that it is surplus pursuant to the Federal Property Management Regulations (reference j)).

6.9.4. If a building or structure is proposed for transfer under this authority, that

which is leased back to the Federal Department or Agency may be all or a portion of that building or structure.

6.9.5. The leaseback authority may be used at all installations approved for closure or realignment under Pub. L. 101-510 (reference (i)).

6.9.6. Transfers under this authority must be to an LRA.

6.9.7. Transfers under this authority may be by lease in furtherance of conveyance or deed. A lease in furtherance of conveyance is appropriate only in those circumstances where deed transfer cannot be accomplished because the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 9601, et seq.) (reference (r)) for such transfer have not been met. The lease in furtherance of conveyance or accompanying contract shall include a provision stating that the LRA agrees to take title to the property when requirements for the transfer have been satisfied.

6.9.8. The leaseback authority can be used to transfer property that is needed either by existing Federal tenants or by Federal Departments or Agencies desiring to locate onto the property after operational closure. The Military Department that is closing or realigning the installation may not transfer property to an LRA under this authority and lease it back unless:

6.9.8.1. The Military Department is acting in an Executive Agent capacity on behalf of a Defense Agency that certifies that a leaseback is in the interest of that Defense Agency; or,

6.9.8.2. The Secretary of the Military Department certifies that a leaseback is in the best interest of the Military Department and that use of the property by the Military Department is consistent with the obligation to close or realign the installation in accordance with the recommendations of the Defense Base Closure and Realignment Commission.

6.9.9. Property eligible for a leaseback is not surplus because it is still needed by a Federal entity. However, notwithstanding that the property is not surplus and that the LRA would not otherwise have to include such property in its redevelopment plan, the LRA should include property to be transferred by a leaseback in its redevelopment plan, taking into account the planned Federal use of such property.

6.9.10. The terms of the LRA's lease to the Federal entity should afford the Federal Department or Agency rights as close to those associated with ownership of

the property as is practicable. The requirements of the General Services Acquisition Regulation (GSAR) (48 CFR Part 570) (reference (s)) are not applicable to the lease, but provisions in the GSAR may be used to the extent they are consistent with this Part. The terms of the lease are negotiable subject to the following:

6.9.10.1. The lease shall be for a term of no more than 50 years, but may provide for options for renewal or extension of the term at the request of the Federal Department or Agency concerned. The lease term should be based on the needs of the Federal entity.

6.9.10.2. The lease, or any renewals or extensions thereof, shall not require rental payments.

6.9.10.3. The lease shall not require the Federal Government to pay the LRA or other local government entity for municipal services including fire and police protection.

6.9.10.4. The Federal Department or Agency concerned may be responsible for services such as janitorial, grounds keeping, utilities, capital maintenance, and other services normally provided by a landlord. Acquisition of such services by the Federal Department or Agency is to be accomplished through the use of Federal Acquisition Regulation (reference (t)) procedures or otherwise in accordance with applicable statutory and regulatory requirements.

6.9.10.5. *The lease shall include a provision prohibiting the LRA from transferring fee title to* another entity during the term of the lease, other than one of the political jurisdictions that comprise the LRA, without the written consent of the Federal Department or Agency occupying the leaseback property.

6.9.10.6. The lease shall include a provision specifying that if the Federal Department or Agency concerned no longer needs the property before the expiration of the term of the lease, the remainder of the lease term may be satisfied by the same or another Federal Department or Agency that needs property for a similar use.

6.9.10.6.1. *Before exercising that option, the Federal tenant shall consult with the LRA concerned or other property owner if the property has been conveyed by the LRA to another entity, in accordance with subparagraph 6.9.10.5, above.*

6.9.10.6.2. *If the Federal tenant decides to exercise this option after consulting with the LRA or other property owner, it shall notify the applicable GSA*

regional office that the property is available for use by a Federal Department or Agency. The GSA regional office shall have 60 days from the date of notification in which to identify a Federal Department or Agency to serve out the term of the lease and to notify the LRA or other property owner of the new tenant. If the regional office does not notify the LRA or other property owner of a new tenant within 60 days from the date of notification, the property is available for use by the LRA or other property owner.

6.9.10.6.3. If the Federal tenant decides not to exercise that option after consulting with the LRA or other property owner, the property is available for use by the LRA or other property owner.

6.9.10.7. The terms of the lease shall provide that the Federal Department or Agency may *repair and improve the property at its expense after consultation with the LRA.*

6.9.11. Conveyance to an LRA under this authority shall be in one of the following ways:

6.9.11.1. *Leaseback property that will be conveyed under an Economic Development Conveyance (EDC)* shall be conveyed as part of the EDC in accordance with the existing EDC procedures and subparagraph 6.9.11.2.2.4., below. The LRA shall submit the following in addition to the EDC application requirements outlined in paragraph 6.4.5., above:

6.9.11.1.1. A description of the parcel or parcels the LRA proposes to have transferred to it and then to lease back to a Federal Department or Agency;

6.9.11.1.2. A written statement signed by an authorized representative of the Federal entity that it agrees to accept a leaseback of the property; and,

6.9.11.1.3. A statement explaining why a leaseback is necessary for the long-term economic redevelopment of the installation property.

6.9.11.2. Leaseback property not associated with property to be conveyed under an EDC shall be conveyed in accordance with the following procedures:

6.9.11.2.1. As soon as possible after the LRA's submission of its redevelopment plan to the Department of Defense and HUD, the LRA shall submit a request for a leaseback to the Military Department. The Military Department may impose additional requirements as necessary but, at a minimum, the request shall

contain the following:

6.9.11.2.1.1. A description of the parcel or parcels the LRA proposes to have transferred to it and then to lease back to a Federal Department or Agency;

6.9.11.2.1.2. A written statement signed by an authorized representative of the Federal entity that it agrees to accept a leaseback of the property; and,

6.9.11.2.1.3. A statement explaining why a leaseback is necessary for the long-term redevelopment of the installation property.

6.9.11.2.2. The transfer may be for consideration at or below the estimated present fair market value. In those instances in which the property is conveyed for consideration below the estimated present fair market value, the Military Department shall prepare a written explanation of why the estimated present fair market value was not obtained.

6.9.11.2.2.1. In a rural area, the transfer shall comply with paragraph 6.5.5., above.

6.9.11.2.2.2. Payment may be in cash or in-kind.

6.9.11.2.2.3. The Military Department shall determine the estimated present fair market value of the property before transfer under this authority.

6.9.11.2.2.4. The exact amount of consideration, or the formula to be used to determine that consideration, as well as the schedule for payment of consideration must be agreed upon in writing before transfer under this authority.

7. EFFECTIVE DATE

This Instruction is effective immediately and is mandatory for use by all the DoD Components.



J. S. Gansler

Enclosures - 2

1. References
2. Definitions

E1. ENCLOSURE 1

REFERENCES, continued

- (e) Public Law 104-106, "The National Authorization Act for Fiscal Year 1996," February 10, 1996
- (f) Sections 202, 203 and 472 of title 40, United States Code, "The Federal Property and Administrative Services Act," as amended
- (g) Deputy Secretary of Defense Memorandum, "OUSD (Acquisition and Technology) Reorganization," May 15, 1996
- (h) [DoD Directive 4165.66](#), "Revitalizing Base Closure Communities and Community Assistance," February 12, 1996
- (i) Public Law 101-510, "The Defense Base Closure and Realignment Act of 1990," November 5, 1990
- (j) Title 41, Code of Federal Regulations, Part 101-47, "Federal Property Management Regulations," current edition
- (k) Public Law 100-526, "The Base Closure and Realignment Act of 1988," October 24, 1988
- (l) Title 43, Code of Federal Regulations, Part 2372, "Procedures," current edition
- (m) Title 32, Code of Federal Regulations, Part 176, "Revitalizing Base Closure Communities and Community Assistance - Community Redevelopment and Homeless Assistance," current edition
- (n) Section 11411 of title 42, United States Code, "The Stewart B. McKinney Homeless Assistance Act," as amended
- (o) Section 4332 et seq. of title 42, United States Code, "The National Environmental Policy Act of 1969," as amended
- (p) Section 2667 of title 10, United States Code, "Leases: non-excess property," as amended
- (q) DoD 4160.21-M, "Defense Reutilization and Marketing Manual," March 1990, authorized by DoD Directive 4140.1, January 4, 1993
- (r) Section 9601 et seq. of title 42, United States Code, "Comprehensive Environmental Response, Compensation and Liability Act," as amended
- (s) Title 48, Code of Federal Regulations, Part 570, "General Services Acquisition Regulation," current edition
- (t) Title 48, Code of Federal Regulations, Parts 1-99, "Federal Acquisition Regulations," current edition

E2. ENCLOSURE 2

DEFINITIONS

E2.1.1. Base Closure Law. The provisions of Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Pub.L. 100-526, 102 Stat. 2623, 10 U.S.C. 2687 note), or the Defense Base Closure and Realignment Act of 1990 (Pub.L. 101-510, Part A of Title XXIX of 104 Stat. 1808, 10 U.S.C. 2687 note) (references (k) and (i)).

E2.1.2. Closure. All missions of the installation have ceased or have been relocated. All personnel positions (military, civilian, and contractor) have either been eliminated or relocated, except for personnel required for caretaking, conducting any ongoing environmental cleanup, and disposal of the base, or personnel remaining in authorized enclaves.

E2.1.3. Communities in the Vicinity of the Installation. The communities that constitute the political jurisdictions (other than the State in which the installation is located) that comprise the redevelopment authority for the installation.

E2.1.4. Consultation. Explaining and discussing an issue, considering objections, modifications, and alternatives, but without a requirement to reach agreement.

E2.1.5. Date of Approval. The date on which the authority of Congress to disapprove Defense Base Closure and Realignment Commission recommendations for closures or realignments of installations expires under Title XXIX of 104 Stat. 1808, as amended (reference (i)).

E2.1.6. Excess Property. Any property under the control of a Military Department that the Secretary concerned determines is not required for the needs of the Department of Defense.

E2.1.7. Installation. A base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Department of Defense, including any leased facility. Such term does not include any facility used primarily for civil works, rivers and harbors projects, flood control, or other projects not under the primary jurisdiction or control of the Department of Defense.

E2.1.8. Local Redevelopment Authority (LRA). Any authority or

instrumentality established by State or local government and recognized by the Secretary of Defense, through the Office of Economic Adjustment, as the entity responsible for developing the redevelopment plan with respect to the installation or for directing implementation of the plan.

E2.1.9. Realignment. Any action that both reduces and relocates functions and DoD civilian personnel positions, but does not include a reduction in force resulting from workload adjustments, reduced personnel or funding levels, skill imbalances, or other similar cause. A realignment may terminate the DoD requirement for the land and facilities on part of an installation. That part of the installation shall be treated as "closed" for this document.

E2.1.10. Rural. An area outside a Metropolitan Statistical Area.

E2.1.11. Similar Use. A use that is comparable to or essentially the same as the use under the original lease.

E2.1.12. Surplus Property. Any excess property not required for the needs and the discharge of the responsibilities of Federal Agencies. Authority to make this determination, after screening with all Federal Agencies, rests with the Military Departments.